

FILED

08 MAY -7 AM 11:52

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY: *[Signature]*

DEPUTY

NUNC PRO TUNC

MAY 02 2008

1 Amos Cendali Jr

2 US Address

3 1112 Portola Av

4 Spring valley CA 91977

5 (619) 469-6045

6 Attorney, Informa Paupers.

7 **United States District Court**
8 **Southern District of California**
9

10 AMOS CENDALI JR

11 PLAINTIFF

12
13 vs

14 TREX ENTERPRISES CORP

15 DEFENDANT
16
17
18
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21
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23
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25
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27
28

CASE NO. 07CV2323-LAB (NLS)

COMPLAINT, FILED 07 DEC 12 PM 12:23

TRIAL BY JURY DEMAND

HONORABLE, JUDGE LARRY A BURNS

COURTROOM 9, 2ND FLOOR.

NOTICE, MOTION

PROPOSED, SECOND AMENDED

COMPLAINT.

DATE, 5-02-2008

FIDUCIARIE BREACH OF DUTY

SHORT & LONG TERM DISAVILITY

INSURANCE.

VIOLATION U.S.C. 29, 1140

DEMAND \$250,000.00

REQUEST HEARING DATE.

1 NOTICE, Defendant Trex Enterprises Corp, 10455 Pacific Center Court 92121, (858) 646-5300
2 Sheppard Mullin Richter & Hampton LLP, Attorneys at Law, 501 West Broadway 19th floor
3 San Diego, CA 92101. (619) 338-6500
4

5 United States District Court, Southern District of California, 880 Front St, Suit 4290 SD Cal 92101
6 (519) 557-5600 Fax (619) 702-9900

7 Honorable Judge Larry Alan Burns, Court Room 9, 2nd floor
8

9 Amos Cendali Jr vs Trex Enterprises Corp

10 Case No. 07CV2323-LAB (NLS)
11

12 Thired Amendment Complaint

13 On January 5 2001 Trex Enterprises Corp gave Amos Cendali Jr an employment extention offer
14 In accordance with our standard employment practice, you will be required to sign a
15 Company Information and Invention Agreement, as well as acknowledgements for
16 company policies on Drugs and Alcohol in the Workplace, Business Conduct, Sexual Harrasment
17 copies of which are enclosed.

18 Plus benefits, Unum Life Insurance of America, Short & Long Term Disibility & Life & AD&D
19 Certificate Policies Amos Cendali Jr agreed to and accepted & signd on january 8 2001
20

21 INTRODUCTION

22 On 11-20-2003 Amos Cendali Jr had an Injury at work reported the Injury to Hr Assistant and
23 Hr Director and requested medical assistance.
24 the next day on 11-21-2003 before going in to work Amos Cendali Jr went to the US Health
25 Works Medical Group, Trex Enterprises Corp emergency medical clinic, Dr made an examination
26 X rays where taken, then Amos Cendali Jr went to work after a thing or two went to see Hr Assit
27 filed out an Injury report Hr Assist handed me the DWC 1 form filed it out & the Hr Assist handed
28

1 me my copy, after that went to see my supervisor. Hr. Director toled me today is your last day with
2 the company.

3
4 **TREX ENTERPRISES**
5 **CORPORATION**
6

7 Nov 21, 2003

8
9 Amos Cendali Jr
10 1112 Portola Av
11 Spring Valley CA 91977
12

13 Dear Amos

14 It is with regret that is has become necessary to terminate your employment as of November 21,
15 2003. The information below outlines the status of your pay and benefits program, which are
16 based in your length of service with the company.

17
18 Payroll Status: Your last day of work at Trex Enterprises Corporation is today, November 21,
19 2003. You will receive a lump sum payment for PTO accrued (27.73 hours) through November 21,
20 2003. There will be no further PTO accrual beyound your last day worked.

21
22 You will not be eligible to receive severance pay in accordance with the Companys severance pay
23 policy, due to willful breach of duty.

24
25 Medical, Dental, and Vosion Insurance: Coverage continues throgh November 30, 2003.

26 Beginning December 1, 2003, you have an option to continue your medical, dental, and vision
27 coverage through COBRA for a period of 18 months, provided you pay the monthly premiums.

28 Information and rates regarding COBRA coverage will be sent to you in a seperate

1 Life and AD&D Insurance: Coverage will cease at midnight on November 21, 2003. A
2 conversion option for your basic life insurance is available through UNUM, if you are interested in
3 this option, please contact Veronica Luna for the proper forms.

4
5 Long-Term and Short-Term Disability Insurance coverages cease at midnight on November 21,
6 2003. A conversion option is not available

7
8 Trex 401 (K) Savings Plan: if you are enrolled in the Trex Enterprises 401 (K) Savings Plan, you
9 have the option of continuing to maintain your account with Fidelity, however, if you would like to
10 terminate your account, please contact Fidelity at 1-800-835-5097. Distribution will occur
11 approximately 7-10 business days after your request for Distribution or Deferral of your account to
12 Fidelity.

13
14 Company Property: All company property such as: company badge, keys to office and building
15 credit cards, cellular phone, computer equipment and related software, books, files, etc, must be
16 returned to me today.

17
18
19
20
21
22
23
24
25
26 Initials On File.

27 N-A AC.
28

1 Amos A. Cendali Jr

2 November 21, 2003

3 Page 2 of 2

4

5 You agree that you will continue to comply with the provisions of the Business Conduct Policy, a
6 copy of which you previously received and the Company Information and Invention Agreement
7 which you previously signed.

8

9 Please let me know if you have any questions at all in this regard.

10

11 Sincerely,

Acknowledged and Agreed.

12

13 Signature on file.

Signature on file.

14 Director of Human Resources

Amos A. Cendali

Date, 11-21-03

15

16

17

18

19

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25

26

Initials On File

27

On File.

28

1 Mr Amos Cendali Jr Employment Injury on 11-20-2003 while employed was Eligable Under the Plan
2 Policy No. 552549-011, Trex Enterprises Corp, 11-21-2003 Termination Letter Indicating

3 **Long-Term & Short-Term Disability Insurance coverages cease at midnight on**
4 **November 21 2003 A conversion option is not available**

5
6 Trex Enterprises Corp, 11-21-2003 Fiduciarie breach of duty to act prudently & in the intreast of
7 Mr Cendali Jr with respect to the plan from Unum Life Insurance of America, Short & LTD Policy
8 No.552549-011 in violation of the terms of the plan.
9 Damages have Resulted from the Breach of Duty.

10
11 UNUM Life Insurance of America, Short & LTD Policy No 552549-011

12 In addition to creating rights for plan participants, ERISA imposes duties upon the people who
13 are responsible for the operation of the employee benefit plan, the people who operate your plan
14 called fiduciaries of the plan, have a duty to do so prudently & in the interest of you & other
15 plan participants and beneficiaries, no one, including your Employer or any other person, may fire
16 you or discriminate against you in any way to prevent you from obtaining a benefit or exercising
17 your rights under ERISA.

18
19 If your claim for a benefit is denied, in whole or in part, you must receive a written
20 explanation of the reson for the denial. You have the right to have your claim reconsidered.

21
22 Mr Amos Cendali Jr respectfully request the United States District Court, Southern District
23 of California 660 Front St, SD CA 92101

24 Honorable Judge Larry Alan Burns, to compel & order Trex Enterprises Corp to answer
25 to this complaint.

26
27 Next Page.
28

CLAIM PROCEDURE

(1) provide adequate notice in writing to any participant or beneficiary whose claim for benefits under the plan has been denied, setting forth the specific reasons for such denial, written in a manner calculated to be understood by the participant with reference to those policy provisions.

(A) Long-Term and Short-Term Disability Insurance coverages cease at midnight on November 21 2003. A conversion option is not available

(2) afford a reasonable opportunity to any participant whose claim for benefits has been denied for a full and fair review by the appropriate named fiduciary of the decision denying the claim. with reference to those policy provisions

Civil Rule 4.1 Service

After the third amended complaint notice, is accepted, Mr Amos Cendali Jr respectfully request to the United States District Court Southern District of California, 660 Front St, SD Cal 92101 Plaintiff is authorized to proceed in forma pauperis under 28 U.S.C. 1915

Court Civil Rule, C. Instructions to the Marshal.

Service of Process. be made by

U S Marshal, Form USM 285 & appropriate instructions will be mailed to the plaintiff.

Mr Amos Cendali Jr respectfully request the United States District Court, Southern District of California, U S Marshal, office administration, to schedule a Hearing date.

Thank you for your attention.

Amos Cendali Jr

BENEFIT AT A GLANCE

LONG TERM DISABILITY PLAN

This long term disability plan provides financial protection for you by paying a portion of income while you are disabled. The amount you receive is based on the amount you earned before your disability began. In some cases, you can receive disability payments even if you work while you are disabled.

EMPLOYERs ORIGINAL PLAN

EFFECTIVE DATE: August 1, 2000

POLICY NUMBER: 552549 011

ELIGIBLE GROUP(S):

All Employees in active employment

MINIMUM HOURS REQUIREMENT:

Employees must be working at least 30 hours per week.

WAITING PERIOD:

For employees in an eligible group on or before August 1, 2000: None.

For employees entering an eligible group after August 1, 2000: None.

REHIRE:

If your employment ends and you are rehired within 12 months, your previous work while in an eligible group will apply toward the waiting period. All other policy provisions apply.

WHO PAYS FOR THE COVERAGE:

Your Employer pays the cost of your coverage.

1 Trex Enterprises Corp
2 Your Group Long Term Disability Policy
3 Policy No. 5525-49.011
4 Underwritten by Unum Life Insurance of America
5 C 1 10-2000 M8
6
7

8 CERTIFICATE OF COVERAGE

9 UNUM Life Insurance Company of America (referred to as UNUM) welcomes you as a client.

10 This is your certificate of coverage as long as you are eligible for coverage and you
11 become insured. You will want to read it carefully and keep it in a safe place.

12 UNUM has written your certificate of coverage in plain English. However, a few terms
13 and provisions are written as required by insurance law. If you have any questions
14 about any of the terms and provisions, please consult UNUM's claims paying office.

15 UNUM will assist you in any way to help you understand your benefits.

16 If the terms and provisions of the certificate of coverage (issued to you) are different
17 from the policy (issued to the policyholder), the policy will govern. Your coverage may
18 be cancelled or changed in whole or in part under the terms and provisions of the policy.

19 The policy is delivered in and is governed by the laws of the governing jurisdiction and
20 to the extent applicable by the Employee Retirement Income Security Act of 1974
21 (ERISA) and any amendments. When making a benefit determination under the policy,

22 UNUM has discretionary authority to determine your eligibility for benefits and to interpret
23 the terms and provisions of the policy.
24

25 For purposes of effective dates and ending dates under the group policy, all days begin

26 at 12:01 am, and end at 12:00 midnight at the Policyholders address.
27

1 ELIMINATION PERIOD:

2 180 days

3 Benefits begin the day after the elimination period is completed.
4

5 MONTHLY BENEFIT:

6 60% of monthly earnings to a maximum benefit of \$10,000 per month.

7 Your payment may be reduced by deductible sources of income and disability earnings. Some
8 disabilities may not be covered or may have limited coverage under this plan.
9

10 MAXIMUM PERIOD OF PAYMENT:

11 Age at DisabilityMaximum Period of Payment

12 Less than age 60

To age 65 but not less than 5 years.

13 Age 60

60 months

14 Age 61

48 months

15 Age 62

42 months

16 Age 63

36 months

17 Age 64

30 months

18 Age 65

24 months

19 Age 66

21 months

20 Age 67

18 months

21 Age 68

15 months

22 Age 69 and over

12 months
23
24
25
26
27

GENERAL PROVISIONS

What is the certificate of coverage

This certificate of coverage is a written statement prepared by UNUM and may include attachments, it tells you.

- the coverage for which you may be intitled.
- to whom UNUM will make a payment and
- the limitations, exclusions and requiements that apply within a plan.

When are you eligible for coverage ?

If you are working for your Employer in an eligible group, the date you are eligible for coverage is the later of

- the plan effective date, or
- the day after you complete your waiting period.

When does your coverage begin ?

When your Employer pays 100% of the cost of your coverage under a plan, you will be covered at 12:01 am on the date you are eligible for coverage.

1 Douse unum policy replace or affect any workers compensation or state
2 disavility Insurance
3 the policy doss not replace or effect the requirements for coverage by any workers
4 compensation or state disavility insurance.
5
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1 LONG TERM DISABILITY

2
3 BENEFIT INFORMATION

4
5 HOW DOES UNUM DEFINE DISABILITY ?

6
7 You are disabled when UNUM determines that

- 8
- 9 · you are limited from performing the material and substantial duties of your
 - 10 regular occupation due to your sickness or injury, and
 - 11 · you have a 20% or more loss in your Indexed monthly earnings due to the same
 - 12 sickness or injury.
- 13

14 After 24 months of payments, you are disabled when UNUM determines that due to

15 the same sickness or injury, you are unable to perform the duties of any gainful

16 occupation for which you are reasonably fitted by education, training or experience

17

18 The loss of a professional or occupational lic, or certification does not, in itself,

19 constitute disability.

20

21 We may require you to be examined by a doctor, other medical practitioner and or

22 vocational expert of our choice. UNUM will pay for this examination. We can

23 require an examination as often as it is reasonable to do so. We may also require

24 you to be interviewed by an authorized UNUM Representative.

25

26

27

1 WHO CAN CANCEL, THE POLICY OR A PLAN UNDER THE POLICY ?

2
3 The policy or a plan under the policy can be cancelled:

- 4
5 - by UNUM or
6 - by the policyholder.

7
8 UNUM may cancel or offer to modify the policy or a plan if:

- 9 - there is less than 75% participation of those eligible employees who pay all or part
10 of their premium for a plan, or
11 - there is less than 100% participation of those eligible employees for a policyholder
12 paid plan
13 - the policyholder does not promptly provide UNUM with information that is rea
14 sonably required.
15 - the policyholder fails to perform any of its obligations that relates to the policy.
16 - fewer than 10 employees are insured under a plan.
17 - the Policyholder fails to pay any premium within the 31 day grace period.

18
19 If UNUM cancels the policy or a plan for reasons other than the Policyholders fail
20 ure to pay premium, a written notice will be delivered to the Policyholder at least 31
21 days prior to the cancellation date.

22
23 If the premium is not paid during the grace period, the policy or plan will terminate
24 automaticlly at the end of the grace period. The Policyholder is liable for premium
25 for coverage during the grace period. The Policyholder must pay UNUM all premium
26 due for the full period each plan is inforce.

27
28 The Policyholder may cancel the policy or plan by written notice delivered to

1 UNUM at least 31 days prior to the cancellation date. When both the Policyholder
2 and agree, the policy or plan can be cancelled on an earlier date. If UNUM
3 or the Policyholder cancels the policy or a plan, coverage will end at 12:00 midnight
4 on the last day of coverage.

5
6 If the policy or a plan is cancelled, the cancellation will not affect a payable claim.

7
8
9 **WHAT ARE YOUR RIGHTS UNDER ERISA ?**

10 As a participant in this plan, you are entitled to certain rights and protections under
11 the Employee Retirement Income Security Act of 1974 (ERISA). ERISA provides
12 that all plan participants shall be entitled to:

- 13
14 · examine without charge, at the Plan Administrator office and at other specified
15 locations, all plan documents including insurance contracts, and copies of all
16 documents filed by the plan with the U.S. Department of Labor, such as detailed
17 annual reports and plan descriptions
18 · obtain copies of all plan documents and other plan information upon written
19 request to the Plan Administrator. The Plan Administrator may make a reason-
20 able charge for the copies and
21 · receive a summary of the plan's annual financial report. The Plan Administrator is
22 required by law to furnish each participant with a copy of this summary annual report.

23
24 In addition to creating rights for plan participants, ERISA imposes duties upon the
25 people who are responsible for the operation of the employee benefit plan.

26
27 The people who operate your plan called fiduciaries of the plan, have a duty to do
28 so prudently and in the interest of you and other plan participants and beneficiaries.

1 U.S. Department of Labor, listed in your telephone directory or the Division
2 of Technical Assistance and Inquiries, Pension and Welfare Benefits Administration
3 U.S. Department of Labor, 200 Constitution Avenue, N.W. Washington, DC. 20210.
4

5 WHAT IF YOUR CLAIM IS DENIED ?
6

7 In the event that your claim is denied, either in full or in part, UNUM will notify you in
8 writing within 90 days after your claim form was filed. Under special circumstances
9 UNUM is allowed an additional period of not more than 90 days (180 days in total)
10

11 ERISA-3 (8-1-2000)

Page 26

12
13
14 within which to notify you of its decision. If such an extension is required, you will
15 receive a written notice from UNUM indicating the reason for the delay and the date
16 you may expect a final decision. UNUM's notice of denial shall include.
17

- 18 · the specific reason or reasons for denial with reference to those policy provisions
19 on which the denial is based.
20 · a description of any additional material or information necessary to complete the
21 claim and of why that material or information is necessary and
22 · the steps to be taken if you or your beneficiary wish to have the decision
23 reviewed.
24

25 Please note that if UNUM does not respond to your claim within the time limits set
26 forth above, you should automatically assume that your claim has been denied and
27 you should begin the appeal process at that time.
28

ERISA-4 (8-1-2000)

Page 27

1 No one, including your Employer or any other person, may fire you or other
2 discriminate against you in any way to prevent you from obtaining a benefit or
3 exercising your rights under ERISA.

4
5 If your claim for a benefit is denied, in whole or in part, you must receive a written
6 explanation of the reason for the denial. You have the right to have your claim
7 reconsidered.

8
9 Under ERISA, there are steps you can take to enforce the above rights. For
10 instance, If you request materials from the plan and do not receive them within 30
11 days, you may file suit in a federal court. In such case, the court may require the
12 Plan Administrator to provide the materials and pay you up to \$110 a day until you
13 receive the materials, unless the materials were not sent because of reasons
14 beyond the control of the Administrator.

15
16 If you have a claim for benefits which is denied or ignored, In whole or in part, you
17 may file suit in a state or federal court. If it should happen that plan fiduciaries mis
18 use the plan's money, or if you are discriminated against for asserting your rights
19 you may seek assistance from the U.S. Department of Labor, or you may file suit in
20 a federal court. The court will decide who should pay court costs and legal fees. If
21 you are successful, the court may order the person you have sued to pay these
22 costs and fees. If you lose, the court may order you to pay these costs and fees, for
23 example, if it finds your claim is frivolous.

24
25 If you have any questions about your plan, you should contact the Plan Administrator.

26
27 If you have any questions about this statement or about your rights under ERISA
28 you should contact the nearest office of the Pension and Welfare Benefits Administration

GLOSSARY

ACTIVE EMPLOYMENT means you are working for your Employer for earnings that are paid regularly and that you are performing the material and substantial duties of your regular occupation. You must be working at least the minimum number of hours as described under Eligible Groups in each plan.

INJURY means a bodily injury that is the direct result of an accident and not related to any other cause. Disability must begin while you are covered under the plan.

INSURED means any person covered under a plan.

LIMITED means what you cannot or are unable to do.

MATERIAL AND SUBSTANTIAL DUTIES means duties that:

- are normally required for the performance of your regular occupation and
- cannot be reasonably omitted or modified, except that if you are required to work on average in excess of 40 hours per week, UNUM will consider you able to perform that requirement if you are working or have the capacity to work 40 hours per week.

MAXIMUM CAPACITY means, based on your restrictions and limitations.

PAYABLE CLAIM means a claim for which UNUM is liable under the terms of the policy.

REGULAR OCCUPATION means the occupation you are routinely performing when your disability begins. UNUM will look at your occupation as it is normally performed in

1 the national economy, instead of how the work tasks are performed for a specific
2 employer or at a specific location.

3
4 WE, US and OUR means UNUM Life Insurance Company of America.

5
6 YOU means an employee who is eligible for UNUM coverage.

1 Amos Cendali jr CO FILE DEPT CK VCHR NO O70
 2 1112 Portola Av 1 PL 100493 101860 0000470065 1
 3 Spring Valley CA 91977
 4

5 Earnings Statement

6 Period Ending 11-15-2003

7 Pay Date 11-21-2003
 8

9 TREX ENTERPRISES CORP

10 10455 PACIFIC CENTER COURT

11 SAN DIEGO CA 92121

12 (858) 646-5300
 13

14 Taxable Marital Statue Single

15 Exeptions Allowances

16 Federal 3, Tax Blocked

17 State 3
 18

19 Social Security Number 551-96-6351

20	Earnings	rate	hours	this period	year to date
21	Regular	14.4200	68.00	980.56	23,784.72
22	Vacation	14.4200	10.00	144.20	2,163.88
23	Overtime				2,349.08
24	Bonus				1,000.00
25	Double Time				403.76
26	Holiday				854.72
27	Retro				294.30
28	Gross Pay			\$1,124.76	30,850.46

1 Other Benefits and

2 Information

this period

total to date

3 Gtl

0.36

8.04

4 401 K Wages Mtd

1,124.76

5 401 K Wages Ytd

1,124.76

30,850.46

6 Vacation

-14.58

8 Deductions

Statutory

9 Social Security Tax

-69.75

1,913.23

10 Medicare Tax

-16.32

447.45

11 CA State Income Tax

-21.65

820.42

12 CA SUI SDI Tax

-10.12

277.65

13 Other

14 Check

-1,006.91

15 Advance

135.23

16 Garnishment

474.82

17 Net Pay

\$0.00

19 Your federal taxable wages this period are

20 \$1,124.76

TREX ENTERPRISES CORP

Injury Prevention Program

Safety Manual

ACCIDENT REPORT

DOI:11-20-2003

Trex Enterprises Corp, 10455 Pacific Center Court 92121, (858) 646-5300

Employee, Amos Cendali Jr, 8-1-2000 to 11-21-2003

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1 Amos Cendali Jr

2 Title

3
4 Facility administrator and coordinator, general maintenance, safety tech II

5
6 On Thursday 11-20-2003 I was covering Gilberto Carrillo for a few days in shipping and receiving

7 I was told by my boss Nick Amicone, Director of Human Resources that it was

8 urgent to get the furniture packed and on its way to Maui, I contacted and had approval

9 for San Diego crating to build some crates for the cubicle walls and office furniture and

10 library book shelves and to help me take the furniture down from the 2nd floor and

11 tacking it to the south side of the building where the (CVC) department is located, this is

12 the area where we had empty crates that San Diego crating had built for the office

13 furniture that was going to Maui

14 at around 3:30 pm I moved some items so we could have the finished crates in one side

15 and the empty crates in another side because the finished crates had to be weighed on a scale

16 for proper shipping documentation and the next day finished out the rest of the crates

17 I picked up a gray (3x2) industrial fuse box and got stuck on the corner of the table next to the reactor

18 and fell on my left foot toe, I sat down for a few minutes the pain was indescribable, then I went to see

19 if the guys were ready to pack up for the day when they saw me limping said what happened

20 one of them told me they saw me leaning over but thinking I was resting, they moved all the crates to

21 side the building, I went to get some ice for the inflammation and pain then closed the 2 roll up door

22 and went to see Veronica Luna, she is HR administrator asst and Injuries claim administrator

23 the person to report in case of injury, she was in shipping and receiving dept, I told her I had injured

24 my toe, she responded by saying I don't want to hear about it, Brett Perkins was next to me and

25 just rubbed his eye because, so I went to the East side of the Building where some old crates needed to

26 be thrown away, I cut them up, But I didn't finish, then I was in too much pain, I was sweating from the task and the

27 pain, I grabbed my tools and went to see my boss, left the tools in facility room, then when

28 I went to his office knocked on the door and told him I had an accident and injured my toe and that

1 I need it to see a doctor and told him that I wood need the pair of steel toe boots (he has rejected
2 for the past month) in order for me to do my job becouse my toe was in pain
3 The first thing that came out of his Mouth was, Ho gave you permition to hire this Morrons to healp
4 you take the furniture down stairs, Mr Amicone was toled by me in the beginning when I sheared the
5 project plan, he seat do it. he knew about the additional charge, Included seeing two of the workers
6 early that day San Diego crating office dep, sent a fax to Mr Amicone toled me he was not
7 going to pay for that service and that it will come out from my facility dep
8 But he had no probleam paying \$5,200.00 Dlls for (10 crates) plus shipping when this
9 funding was approved by all three managers.
10 I mention the Dr assistance, he seat he needed to go and on our way out of the office
11 I ask him will you approve (sign) the petty cash receipt \$80.00 to perches steel boots
12 I drive a saturn stick shift pressing down the clutch feels like a hot needle inside my toe
13 on my way out off the building I felt sad, becouse the person I work for turn his back on
14 me when Iwas injured, I wood never do that to anybody
15 one of my responsabilities and goues whit my nature is for the safety for my self and the people around
16 the next day friday 11-21-2003 my toe was in bad shape swollen black & purple walking was painful
17 driving the car was tremendoussly irritating, I went to see the companys Dr, the receptionist toled me
18 told me is this job related, I set yes then I had to have paper work from the company stating this claim
19 sow I call Verinica Luna to get here approval for the examination, Veronica responded she needed
20 to fill out the paper work and have my report first, but if I cud walk back to the company that wood
21 be good, I toled here I am here and I am in pain, she set hold on then about 4 min she set o.k.
22 I talk to the Dr. tuck X ray picures and told me I had one & half Broken bones on my toe, with good
23 rest they shot heal in about 8 to 14 weeks if no complications occur
24 I went to trex picked up the selected winning bidder for the comming project, I then went to
25 shipping and receiving then went to see Veronica filled out the report, went to see Nick Amicone
26 and toled me today is your last day with the company.
27 I have work for Mr Amicone for the past 6 months half this time I have requested safety steel toe boots
28 for my co worker Gilberto Carrillo and my self, first they are to expencive \$80.00 Dlls, then had Veronic

1 looking for more lower prize boots, she never fallowed thru, went back over and over answer was no.
2 I talk to Allen Walsky, the vice president administrative asst, and sheered my concern the best
3 answer I cut get, was Mr Amicone is your boos, when I tried the vice president for a fue minutes of
4 here time all I got was mauve, to purchasing talk to Vicky Jackson and Donny Wilder, I expressed the
5 lack of support from Mr Amicone.

6 Mr Amicone tuck away my opportunity for growth and income, based on succesful training
7 accomplishments, Facility Management, Business Writing, Electrical Safety, Laser Safety, that was
8 scheduled on 6-2003 thru 12- 2003. constantly not to use co workers for help.

9
0 Date 1-14-2004

1 Days later ask for the the boots and I address the HAZ over the (CVC) Silicone carbide dept

2 Amicone wood chainge the subject, other days wood just say no 11-20-2003

3 Statement of efforts to resolve Grievance, I talk to the company president and expressed about
4 the Amicone looking in to the prize for the boots.

5 I talk to the company vice president expressed about Mr Amicone working against me not with me
6 when I tried to set an appt , the answer was maybe.

7 I know the facility compliance and in house program and I did my part to get Amicone related
8 related to are facility

9 I told Mr Amicone to set an appt with the vice president him self & me, Amicone set O.K.
10 it never happand.

11 Just about all the building personel know about this Issue

12 In the beginning under Amicone wing supervision I talk to the vice president about Amicone refusing
13 training progression, the answer was his your boos.

1 Dated 11-21-2003 X Ray No. (25496) Dated 11-21-2003

2 US Health Works Medical Group

3 WORK STATUS REPORT

4 Name.Last, Cendali First, Amos Date of Exam, 11-21-2003 Case No. 103015938

5 SS, XXX-XX-XXXX Date of Birth 11-27-1969 Date of Injury 11-20-2003 Claim No. Blank

6 Employer, Trex Enterprises Corp. Tel.858-646-5300

7 Claim Administrator, Kemper Insurance. Tel 800-800-7885

8
9 DIAGNOSES (Include ICD-9 code If possible

10 928.3 CRUSH INJURY TOES, (NOTE) DOI:11-20-2003, AC.

11 826.0 FRACTURE TOE, (NOTE) DOI:2-6-2003, AC.

12
13 X Return to work as of 11-21-2003 with the restrictions indicated below. Estimated
14 duration of modified duty is 7 days.

15
16 () No (X) Limited standing or walking to____hrs·day

17 (X) No () Limited kneeling or squatting to____hrs·day

18 (X) No climbing

19 (X) Sit down job.

20 (X) Must wear

21 (X) Other, POST OP SHOE

22 (X) Must keep, LT FOOT elevated

23 IF NO MODIFIED WORK IS AVAILABLE AT PLACE OF WORK, EMPLOYEE SHOULD BE OFF WORK.

24 TREATING PROVIDER

25 Name, ROMANO, JOHN. Lic, GO74689 Date of Exam, 11-21-2003

26 Issued at: USHW of California-Sorrento Mesa, 5897 OBERLIN DRIVE, SUITE 100, SD CA 92121

27 Tel: 858- 455-0200

28 Arrival Time 11:30 AM Release Time 2:10 PM Next Visit Date 11-25-2003 Time 3:00 PM

1 US Health Works Medical Group

Patient Information

2 Employer, Trex Enterprises Corp

Date, 11-21-2003

3 Patient, Amos Cendali

4 Is this your first visit, please fill the blanks

5 Address, 10455 Pacific Center Court

6 Home Phone No. (858) 254-6367

City, SD.

State, Cal

Zip, 92121

7 Birth Date, 11-27-69

Work Phone, (858) 646-5300

8 Date of Injury, 11-20-2003

Sex, M.

Marital Statues, S.

9 Last Day Worked, 11-20-2003

Time, 3:30

10 Address Where the Injury Occured, 10455 Pacific Center Court, 92121

Occupation, Facility Worker.

11 Is your problem caused by something that happand at work ? (yes)

12 Injury was Reported to, Veronica Luna, Nick Amicone.

13 US Health Works MG. ever treated you before ? (yes)

Date, 11-20-2003

Time, 4:10 PM

14 Is your first visit, describe how your present injury- illness occured

When ? march

15 Is a follow up visit, indicate any improvement or chainges in your condition.

16 Was moving an Electrical Commurtial Panel Box 4x2 as I was Pushing got cot on something and

17 dropt right on my left toe, the same that got fractured in march, I have bean denied steel toes

18 from my boss meany times.

19 According to Proof.

20
21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 II. The Sport Institute Medical Group, Inc.

2 Orthopaedic, William J. Previte.

3 (NOTE) Primary Treating Physicians

4 Permanent & Stationary Evaluation

5 May 4 2004

6 DOI:11-20-2003, 2-6-2003

7 DOE: 5-4-2004

8 Claim No. WVA610147122A001

9 Diagnoses:

10 1. Contusion with fracture, left great toe, now healed with residual metatarsal pain.

11 2. Aggravation, left great toe fracture, 11-20-2003

12
13 Disability Status

14 The patient may be considered permanent and stationary for rating purposes.

15 he has been temporarily totally disabled through the course of my evaluation and treatment.

16
17 Work Restrictions

18 He is precluded from prolonged weightbearing, impact such as jumping, running, squatting or other
19 work activities that would require hyper-dorsiflexion of the metatarsal phalangeal joint & increased
20 pressure on the great toe, metatarsal phalangeal joint region. He is prophylacically precluded
21 from heavy lifting.

22
23 Apportionment

24 The original injury occurred on 2-6-2003 with an aggravation occurring on
25 11-20-2003 I do believe apportionable disability exist. The patients disability
26 as it pertains to the left great toe resulting from the 2-6-2003 Injury, would have
27 precluded him from prolonged weightbearing. The Increase in disability as described above
28 should be apportioned to the aggravation of 11-20-2003

1 Vocational Rehabilitation

2 He has been terminated from his employment and has not been capable of attempting to
3 return to work.

4 A formal job analysis is not available for my review at this time. The physical
5 capabilities provided me suggest that this individual is required to stand walk for up to 5-6
6 hours per day & lift & carry objects weighing up to 25 lbs. It would not appear that there exist
7 awkward body positions such as squatting. This is as provided me by the nurse case manager
8 If indeed this is accurate, he would be a Qualified Injured Worker with regard to the amount of
9 standing & walking required through the day. Vocational rehabilitation would therefore
10 be appropriate.

11
12 St Paul Travelers

13 St Paul Mercury Insurance Company

14 September 16 2004

15 Re: Notice of Potential Eligability for Vocational Rehabilitation

16 Claim No. WVA610147122A001

17 Injury Date 11-20-2003

18 We are X advising

19 X Dr Previte reports that you cannot return to your regular job duties, A copy of the report X
20 inclosed.

21 X Douse not have a job available within your work restrictions.

22
23 May 23 2006, St Paul Mecury Insurance Company, Accepted Injury for DOI:11-20-2003

24 Claim No. WVA610147122A001

25 St Paul Ins PD Initial base check stube WC claim DOI: 11-20-2003

26 According to Proof.

1 III. AME Byron F. King, MD. Agreed Medical Examiners Supplemental Report (ML104-94-97)

2 Date October 4 2005, Claim WVA610147122A001 DOI:11-20-2003. Ref 37242

3 (NOTE) the working diagnoses were.

4 1. Comminuted fracture minimally displaced, proximal phalanx left great toe

5 2-6-2003 healed.

6 2. Fracture distal phalanx left great toe with associated symptoms of

7 sesamoiditis secondary to the Injury of 11-20-2003 persisting & symptomatic.

8
9 Vocational Rehabilitation

10 Mr Cendali in my opinion will not require vocational retraining if his employer would

11 accommodate his work restrictions. However, it is my understanding he has been Terminated

12 Mr Cendali should be able to work as a facility maintenance worker with the accommodation

13 of being able to sit a while, stand a while, & walk a while depending on the level

14 symptoms he experience in the injured left distal foot.

1 A short and plain statement of the claim showing that the pleader is intitled to relief, and a demand
2 for the relief the sought, whitch may include relief in the alternative different type of relief.

- 3
- 4 - SDI & St Paul Insurance, Injury Compensation for DOI: 11-20-2003 Total \$24,072.00
 - 5 - Transaction document shude specifcly include the following
 - 6 - Title of Unum Life Ins of America & LTD Policy No.552549-011 & DOI: 11-20-2003
 - 7 - Vocational Benefit Included in the LTD Policy, DOI:11-20-2003
 - 8 - Penalty the mavimum the policy pays, 60% of monthly earnings, liquidation.
 - 9 - in an orderly \$250,000.00
 - 10 - Your payment may be reduced by deductible sources of income and disability earnings.
- 11
- 12
- 13

14 Nexy Pages

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1 TITLE 29 CHAPTER 18 SUBCHAPTER I SUBTITLE B PART 5

2 PART 5-administration and enforcement.

3
4 TITLE 29 CHAPTER 18 SUBCHAPTER SUBTITLE B PART 5 1132

5 (a) Person empowered to bring a civil action

6
7 (1) the district court of the United States shall have exclusive jurisdiction of civil actions
8 under this chapter broad by a participant or fiduciary.

9 (2) where an action under this subchapter is broght in a district court of the
10 United States it may ne broad in the district where the plan is administered where the breach
11 took place, where defendant resides or may be found & process may be served.

12
13 TITLE 29 CHAPTER 18 SUBCHAPTER I SUBTITLE B PART 5 1140

14 1140. Interference with protected rights.

15
16 The proivitions of section 1132 of this Title shall be appliable in the enforcement of this section.

PROOF OF SERVICE

DATE, 5-02-2008 PLACE, State of California

SERVED

US. District Court, Southern District of California, Office of the Clerk

880 Front Street, Suite 4290, San Diego, CA 92101, (619) 557-5600

SERVED ON (PRINT NAME)

By Hand Delivery.

MANNER OF SERVICE

Amos Cendali jr

Plaintiff

SERVED BY (PRINT NAME)

TITLE

DECLARATION OF SERVER

**I declare that additional information is included & under penalty of perjury under
the laws of the United States of America that the forgoing information contained
in the Proof of Service is true and correct**

Amos Cendali Jr, recerve the right to make future chainges as appropriate

Executed on

5-02-2008

DATE

SIGNATURE OF SERVER

Amos Cendali jr

1112 Portola Av, Spring Valley CA 91977, (619) 469-6045

US MAILING ADDRESS OF SERVER.

1 VI. TRIALS Rule 38

2 Rule 38. Right to a Jury Trial, Demand

3
4 (a) Right Preserved.

5
6 The right of trial by jury as declared by the Seventh Amendment to the Constitution & as provided
7 by federal statute is preserved to the parties inviolate.

8
9
10
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16
17
18 I Certify, that chainges have been made & aditional Information is included & I declare under penalty
19 of perjury under the law of the state of california that the forgoing is thru & correct

20 Amos Cendali Jr, recerve the right to make future chainges as appropriate

21
22 Executed on 5-02-2008 at San Diego, California.

23
24
25 Amos Cendali Jr

26 Amos Cendali Jr
27
28